IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 256 OF 2005

Shri Shaikh Yacub Muzawar
(since deceased) through LRs.,

1. Smt. Halima Shaikh Yacub Muzawar,
   (widow, also since deceased)

2. Shri Abbas Shaikh Yacub Muzawar

3. Ms. Sukhina Yacub Muzawar,
   all major, residents of H.No.16/82/C,
   Shankerwaddi, Taleigao, Ilhas- Goa. ..... Petitioners

Versus

1. Shri Shriniwas Ramnath Pai,
   (since deceased) through L.Rs.,

   a. Mrs. Jayanti S. Pai, major, widow,
   b. Mr. Atul S. Pai, major,
   c. Miss Amita Pai, major,
   d. Miss Anuja Pai, major,

   All residents of Shankerwadi,
   Taleigao, Ilhas - Goa.

2. The Rent Controller (H.Q.),
   Collectorate, North - Goa,
   Panaji - Goa.

3. The Administrative Tribunal of Goa,
   Panaji - Goa. ..... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. S. Y. Thali, advocate for the petitioners.

Mr. P. S. Rao, advocate for the respondents no.1(a) to (d).

CORAM : R. M. LODHA, J.

DATE : 15th September,2005.

P.C.

Heard Mr. S. D. Lotlikar, the learned Senior Counsel for the petitioners and Mr. P. Rao, the learned counsel for the respondent nos.1 (a) to (d). The Rent Controller as well as the Administrative Tribunal have held that the petitioners were liable to be evicted summarily under Section 32 (4) of the Goa, Daman and Diu Buildings (Lease, Rent, Eviction and Control) Act, 1968 (for short "the Act")

2. Two-fold contention was advanced by the learned Senior Counsel for the petitioners. Firstly the learned Senior Counsel submitted that the Rent Controller and the Administrative Tribunal proceeded in considering the sufficiency of cause put forth by the tenant for the purposes of failure to pay the rent and not for the purpose of stopping all further proceedings and making an order of eviction. The second contention of the learned Senior Counsel for the petitioners was that as per the lease document the

petitioners were required to pay rent at the rate of Rs.6/- per month and not Rs.10/- per month and, therefore, non-payment of rent @ R.l0/- per month cannot furnish the ground of eviction under Section 32(4).

3. None of the contentions has any merit. It is true that Clause (4) of Section 32 of the Act came up for consideration before this Court in the case of ***Shri Joao Xavier Pinto vs. Shri Oswald J.C. Velho & 2 Ors.***, 1990 (1) GoaL.T. 116 wherein the Division Bench of this Court held thus:-

> " In the first place let it be seen that sub-section (4) of Section 32 provides a cause being shown by the tenant which must however be a sufficient cause not for the purpose of failure to pay but for the purpose of stopping or not all further proceedings and making an order directing the tenant to put the landlord in possession. This part of the provision of Section 32 needless to say must be held to be apart of the beneficial legislation meant to inhere a benefit in favour of a tenant. There need no be over emphasis on the fact that the Rent Control Act is enacted for the purposes of giving protection to tenants and arresting their eviction by rapacious landlords. Therefore the

> rights of landlords are curtailed to seek eviction on certain restricted grounds. It is equally true that Section 32 has been enacted to protect interest of the landlord to secure rent from cantankerous tenants who fail to pay or deposit before the Controller or the appellate or the revisional authorities so that landlords are not driven to file different proceedings for recovery of rents in another forum. Needless to mention that recovery of rent is not foreseen in the Rent Control Act."

4. What the Division Bench has held is that sufficient cause that is required to be shown by the tenant is not for the purpose of failure to pay, but for the purpose of stopping and making an order to put the landlord in possession. When the Rent Controller or the Administrative Tribunal examines sufficiency of cause shown by the tenants, they are not required to reproduce the expression that they are examining the sufficient cause not for the purpose of failure to pay but for the purpose of stopping all further proceedings and making an order to put the landlord in possession. In my view, the consideration of the matter by the Rent Controller as well as by the Administrative Tribunal does not suffer from any legal infirmity. The discussion in the impugned

Order shows that the cause shown by the tenant was not found to be sufficient cause and the Rent Controller and the Appellate Tribunal were satisfied that the summary powers under Section 32 (4) of the Act deserved to be invoked and the order of eviction be passed. The first contention is rejected.

5. As regards the second contention raised by the learned Senior Counsel for the petitioners that under the lease agreement the tenant was required to pay rent at the rate of Rs.6/- per month and not Rs.10/- per month and, therefore, non-payment of rent could not furnish ground of eviction under Section 32(4) suffice it to say that there were three applications made by the landlord for summary eviction under Section 32(4) of the Act. The matter arising out of one of the applications came up before this Court before and provisionally the tenant was directed to deposit the rent at the rate of Rs.10/- per month. Even thereafter the tenant persistently and repeatedly failed to deposit the rent at the rate of Rs.10/- per month and that compelled the landlord to make the application dated 11th April, 1983 under Section 32(4) of the Act. The facts that have come on record clearly show that the petitioners are habitual defaulters and determined in not paying

the rent regularly.

6. The eviction order passed by the Rent Controller and confirmed by the Appellate Court does not call for any interference.

7. The Writ Petition is dismissed in limine.

8. Three months' time is granted to the petitioners to vacate the subject premises subject to the petitioners individually or collectively filing an undertaking before this Court within two weeks from today that on or before the expiry of three months they would hand over peaceful and vacant possession of the subject premises and that during this time they shall not sub-let, assign or part with possession to anybody and that the rent up-to-date shall be paid/deposited.

R. M. LODHA, J.

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